



STATE OF NEW JERSEY

Board of Public Utilities

*Two Gateway Center
Newark, NJ 07102*

TELECOMMUNICATIONS

ORDER GRANTING MOTIONS

I/M/O THE PETITION OF CAT COMMUNICATIONS)
INTERNATIONAL, INC. REQUESTING THAT SPRINT)
COMMUNICATIONS CO., L.P., BE REQUIRED TO)
ALLOW DIAL-AROUND CALLING AND ALTERNATIVELY) BPU DOCKET NO. TC01080526
FOR RELIEF FROM THE PAYMENT OF VERIZON'S) OAL DOCKET NO. PUC 8139-01
TARIFF FOR BLOCKING DIAL-AROUND CALLS)

(SERVICE LIST ATTACHED)

BY THE BOARD:

Introduction

By letter dated March 29, 2002, CAT Communications International, Inc. (CCI) filed a motion with the Board of Public Utilities (Board) for emergent relief requesting an order requiring Verizon New Jersey Inc. (Verizon) to continue to provide service to CCI, and to refrain from embargoing CCI's accounts or suspending acceptance and processing of orders by CCI, pending a final determination by the Board of a Petition filed by CCI on August 23, 2001. By this Order, and for the reasons set forth herein, the Board orders Verizon to refrain from embargoing CCI's accounts.

In addition, the Board also grants the motion filed by Sprint Communications Co., L.P. (Sprint) for pro hac vice admission of Brant M. Laue, Esq. and Zsuzsanna E. Benedek, Esq., both of whom are attorneys in good standing in another jurisdiction.

Background

CCI is a competitive local exchange carrier (CLEC) reselling local exchange services in New Jersey, pursuant to a Board-approved December 31, 1997 resale interconnection agreement with Verizon. According to its August 22, 2001 Petition, CCI resells local exchange service on a prepaid basis. CCI stated that most of its customers, many of whom are low-income individuals without funds for deposits, but with a poor or non-existing credit history, pay a fixed monthly charge for unlimited local exchange service. CCI advised that its customers "represent an ethnically and racially diverse population and many live in New Jersey's inner cities." Petition at ¶¶4. CCI stated that it uses the facilities of other carriers to provide service, and that it does not own any switches or other facilities. Id. at ¶¶6. CCI averred that Verizon provides the necessary

facilities for the local exchange calls made by its customers. Ibid. CCI stated that it does not offer long distance services in New Jersey, has never requested authority from the Board to provide long distance services in New Jersey, and has never requested facilities from Verizon to offer long distance services. Id. at ¶7. However, CCI does offer its customers the ability to access a third party interexchange carrier's 1-800 long distance calling product from their homes.

According to the Petition, Sprint is one carrier among others that offers dial-around services to customers so that they can bypass the presubscribed interexchange carrier (IXC) and use Sprint. CCI advised that Sprint has, in the past, complained about difficulties in collecting for dial-around calls because there is no contractual relationship between the caller and Sprint. Id. at ¶12. On March 30, 2000, Sprint filed suit against CCI in the United States District Court for the District of New Jersey alleging violations of the Federal Communications Act by CCI because it does not block dial-around calls by its customers.¹ Id. at 14. On May 15, 2000, Nicholas H. Politan, U.S.D.J., issued a Preliminary Injunction, pending a final hearing and judgment, requiring that CCI block its customers from placing dial-around calls on Sprint's long distance network. Id. at ¶15; Sprint v. CCI, Order for Preliminary Injunction (May 15, 2000). Sprint was also ordered to post a bond in the amount of \$250,000 for payment of such costs and damages as may be incurred or suffered by CAT if found to have been wrongfully enjoined. Sprint v. CCI, Order for Preliminary Injunction (May 15, 2000).

By letter dated August 22, 2001, CCI filed a Petition with the Board requesting that the Board issue an order requiring Sprint to allow dial-around calling by CCI's end-user customers, or alternatively, require Sprint to block dial-around calls at its own switch and cost. The Petition also requested that the Board investigate and declare Verizon's tariffed blocking charges to be unjust and unreasonable.

On September 21, 2001, Verizon filed an answer to CCI's petition stating that the Petition fails to state a claim for relief as to Verizon. Verizon also argued that the Board lacks jurisdiction over some or the entire dispute during the pending litigation, and the Board should stay the present proceeding pending resolution of the Federal proceeding.

By letter dated October 29, 2001, Sprint answered the Petition. Sprint also stated that the Petition failed to state an adequate basis for relief, and argued that relief granted by the Board would interfere with the preliminary injunction entered by the U.S. District Court. Sprint also repeated its Federal Court claim that CCI's actions allowing dial-around was a violation of the Federal Communications Act, constituted trespass and conversion. Sprint asked that the Board dismiss the Petition.

On November 14, 2001, this matter was transmitted to the Office of Administrative Law (OAL).

Motion for Emergent Relief

On March 14, 2002, Verizon Communications sent CCI a letter notifying CCI that it "remains in continuing default of its bill payment obligations in New Jersey under its Interconnection Agreement with Verizon." Verizon Communications advised that it "will not continue to provide its wholesale services to CAT Communications on present business terms, unless this payment default is timely cured." The letter advised that CCI is in default in the amount of \$5,083,608.53 as of February 25, 2002. Verizon Communications advised that, if CCI does not cure the breach of its Interconnection Agreement within thirty (30) days, then an embargo of CCI

¹ Sprint Communications Company, L.P. v. CAT Communications International, Inc., Civil Action No. 00-1491 (D.C.N.J.) (hereinafter, Sprint v. CCI).

accounts, with suspension of acceptance and processing of orders, will be activated in New Jersey.

By letter dated March 29, 2002, CCI filed a motion with the Board for emergent relief. In its motion, CCI argued that Verizon's threatened discontinuance of service "ignored the proceeding before [the Office of Administrative Law (OAL)], violates the Board's rules concerning the notice of discontinuance of service, and will have the effect, if allowed to take place, of reducing competition in the local exchange market." Emergent Relief Motion Certification of Counsel at ¶15. CCI alleged that an embargo of CCI's accounts would be a severe hardship to CCI and its customers, "many of who [sic] may be unable to obtain alternate service." *Id.* at ¶16. CCI asked the Board for an Order requiring Verizon to continue to provide service to CCI, and to refrain from embargoing CCI's accounts or suspending acceptance and processing of orders by CCI pending a final determination by the Board on the Petition by CCI filed on August 23, 2001.

On April 1, 2002, Katharine Hayden U.S.D.J. dissolved the preliminary injunction, thereby allowing CCI's customers to dial-around. Judge Hayden also directed that Sprint's bond, in the original amount of \$250,000 be increased, as determined by counsel, up to an amount equal to the blocking charges due Verizon from CCI.

On April 15, 2002, Verizon responded to CCI's Motion by explaining that its relations with CCI are governed by the Resale Agreement and not by New Jersey Administrative Code. Verizon argued that it is not a beneficiary of the bond that Judge Hayden required that Sprint put up for the amount of the blocking charges and the resale agreement is clear in that CCI furnish an irrevocable letter of credit guaranteeing payment to Verizon. Verizon argued that CCI is trying to cloud the issue by petitioning the Board for emergent relief. Verizon requested that the Board deny CCI's request for emergency relief.

On April 15, 2002, the Division of the Ratepayer Advocate submitted comments to all parties concerning CCI Communications Motion for Emergency Relief. The recommendation from the Ratepayer is that the parties ascertain the total amount owed for toll blocking, and to attempt to negotiate an interim settlement that would preclude the need to embargo new CCI customers. This would ensure the continued availability of pre-paid telecommunications services to potential CCI subscribers, who are largely low-income consumers.

Sprint also responded on April 15, 2002. Sprint urged the Board to immediately schedule hearings in this matter. Sprint also stated the following:

- (1) [t]he federal court injunction issued against [CCI] was appropriate and lawful and necessary to prevent [CCI] from continuing to violate the law.
- (2) [Verizon] created a new issue regarding the amount of blocking charges billed to [CCI] through an erroneous interpretation and application of its tariff.
- (3) [Verizon] failed to utilize alternative pricing options that would have been more appropriate to this circumstance and that would have minimized the amounts billed to [CCI].
- (4) [CCI] waited until August 21, 2001 to file a formal complaint before the BPU challenging [Verizon's] tariff charges and waited until November 2001 to seek to take action in federal court concerning a Sprint-posted bond; and,

- (5) [Verizon] – not Sprint – is primarily responsible for the creation of an issue regarding the level of charges now demanded by [Verizon] and disputed by [CCI] given [Verizon's] interpretation and application of its tariff.

[Sprint Answer at 1-2].

Sprint urged the Board to make clear that one of the issues to be addressed by the parties is Verizon's alternative pricing practices, as well as any associated tariff provisions. Sprint also recommended that, in order to resolve the matter expeditiously, the Board should take the matter from the OAL. Id. at 3.

Motion for Admission Pro Hac Vice

Pursuant to N.J.A.C. 1:1-5.2 and R. 1:21-2, on January 23, 2002, Sprint filed a motion for the admission pro hac vice of Brant M. Laue, Esq. and Zsuzsanna E. Benedek, Esq. Both Mr. Laue and Ms. Benedek are attorneys in good standing. Mr. Laue has been admitted to the Bar of the State of Missouri, and Ms. Benedek has been admitted to the Bar of the State of Pennsylvania. No objections to this motion have been filed.

Discussion

With regard to the issue of the blocking charges imposed on CCI by Verizon, the Board notes that this is an issue before the Office of Administrative Law. The Board expects the Initial Decision will include a recommendation to the Board specifying the correct application of Verizon's tariff in this matter.

With regard to Sprint's request that the Board take this matter back from the OAL for conduct of hearings before the Board, neither do we believe that doing so will necessarily hasten the resolution of this matter, nor will doing so result in a more complete record than what can be developed at the OAL. Therefore, the Board DENIES Sprint's request in this regard.

With regard to Verizon's threatened embargo of CCI accounts, with suspension of acceptance and processing of orders, CCI has asked the Board to consider its application on an emergent basis to prevent what CCI asserts will be a "severe hardship to CCI and its customers." In weighing this emergent request, the Board is mindful that its own regulations governing disputes as to bills provide that a utility may not discontinue service to its customer when the bill dispute has been formally brought to the Board, provided that non-disputed charges have been paid. N.J.A.C. 14:3-7.13(a). CCI has brought to the Board's attention the existence of a dispute as to its bills from Verizon in connection with a threatened embargo, and so has invoked the authority of the Board to intervene in a billing dispute to protect CCI from termination of Verizon's service to prospective customers. Verizon's threatened embargo, if imposed, will inevitably lead to a shrinkage of CCI's customer base as customers either leave CCI's service territory or migrate to another carrier, and CCI would be foreclosed from adding new customers. The Board agrees with CCI that such an embargo will reduce competition, and cause harm to potential CCI customers, many of whom are low-income individuals without funds for deposits, and may otherwise not be able to obtain local exchange service. In the Board's view, this is a potentially harsh result. The Board also notes its understanding that all non-disputed charges, including Verizon's wholesale charges to CCI for resale of local exchange services to CCI's customers, have been paid.

Therefore, in light of all the circumstances, especially the threatened imminent embargo by Verizon of its service to CCI, and pursuant to N.J.A.C. 14:3-7.13(a), the Board HEREBY GRANTS the motion for emergent relief and ORDERS Verizon to maintain service to CCI until such time as the billing dispute is resolved in the matter now pending at the OAL.

With regard to the motion for admission pro hac vice of Brant M. Laue, Esq. and Zsuzsanna E. Benedek, Esq., the Board is satisfied that the requirements of N.J.A.C. 1:1-5.2 and R. 1:21-2 for the admission of an attorney in good standing in another jurisdiction have been met, and the motion, therefore, is HEREBY GRANTED subject to the following limitations. Each attorney admitted pro hac vice in New Jersey shall:

- (a) abide by all New Jersey Court Rules, including all disciplinary rules;
- (b) consent to the appointment of the Clerk of the Supreme Court as agent upon whom service of process may be made for all actions against him/her or his/her firm that may arise out of his/her participation in this matter;
- (c) notify the Board immediately of any matter affecting his/her standing at the bar of any court; and
- (d) have all pleadings, briefs and other papers filed with the Board signed by an attorney of record authorized to practice law in this State, who shall be held responsible for them and for the conduct of this cause and of the admitted attorney herein.

In addition, the granting of admission pro hac vice shall not become effective until proof of compliance with R. 1:20-1(b) and R. 1:28-2, which requires one payment check to be sent to the Lawyers' Fund for Client Protection for payment of the sums required by R. 1:28-2 for the Lawyers' Fund for Client Protection and R. 1:28-1(b) for the Ethics Financial Committee, has been filed with the Board.

DATED: 5/15/02

BOARD OF PUBLIC UTILITIES
BY:

(signed)
JEANNE M. FOX
PRESIDENT

(signed)
FREDERICK F. BUTLER
COMMISSIONER

(signed)
CAROL J. MURPHY
COMMISSIONER

(signed)
CONNIE O. HUGHES
PRESIDENT

ATTEST:

(signed)
KRISTI IZZO
BOARD SECRETARY

I/M/O THE PETITION OF CAT COMMUNICATIONS INTERNATIONAL, INC. REQUESTING
THAT SPRINT COMMUNICATIONS CO., L.P. BE REQUIRED TO ALLOW DIAL-AROUND
CALLING AND ALTERNATIVELY FOR RELIEF FROM THE PAYMENT OF VERIZON'S
TARIFF FOR BLOCKING DIAL-AROUND CALLS

Service List

DOCKET NO. TC010800526

=====

Bruce D. Cohen, Esq.
Verizon New Jersey Inc.
540 Broad Street
Newark, NJ 07102

Evelyn C. Jackson
Verizon New Jersey Inc.
540 Broad St., Room 1500
Newark, NJ 07101

Anthony Centrella, Director
Board of Public Utilities
Division of Telecommunications
Two Gateway Center
Newark, NJ 07102

Paul E. Flanagan, Esq.
McDonough, Bauman Teehan & Flanagan, LLP
685 Ridgewood Road
Maplewood, NJ 07040

Zsuzanna E. Benedek, Esq.
Sprint Communications Company, L.P.
240 N. Third Street, Suite 201
Harrisburg, PA 17101

Ayo Sanderson, Esq.
Verizon New Jersey Inc.
540 Broad Street
Newark, NJ 07102

Eugene P. Provost, D.A.G.
Department of Law and Public Safety
Division of Law
124 Halsey Street
Newark, NJ 07102

John DeLuca
Chris Molner
Board of Public Utilities
Division of Telecommunications
Two Gateway Center
Newark, NJ 07102

David A. Brooks, DAG
Department of Law and Public Safety
Division of Law
124 Halsey Street
Newark, NJ 07102

Colleen A. Foley, Esq.
LeBoeuf, Lamb, Greene & MacRae
One Riverfront Plaza
Newark, NJ 07102

Seema M. Singh, Esq.
Acting Ratepayer Advocate
Joshua Seidemann, Esq.
Division of the Ratepayer Advocate
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07101

Brant M. Laue, Esq.
Armstrong Teasdale, L.L.P.
2345 Grand Blvd., Suite 2000
Kansas City, MO 64114

Lee Lauridson, Esq.
Sprint Communications Company, L.P.
8140 Ward Parkway
Kansas City, MO 64108

Hon. Mumtaz Bari-Brown, ALJ
Office of Administrative Law
185 Washington Street
Newark, NJ 07102